

SUPPLEMENTAL AGENDA ITEM 27A

Board of Directors

June 7, 2006, 9:30 a.m.

Location:
San Bernardino Associated Governments
1170 W. 3rd Street, 2nd Floor
San Bernardino, CA 92410

Discussion Calendar

Project Development Program

27A. Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy to Users (SAFETEA-LU) Fund Exchange with the Inland Valley Development Agency (IVDA)

Approve Agreement 06-072 establishing a “dollar for dollar” fund exchange of SAFETEA-LU High Priority Project funds distributed to the IVDA for Measure I Valley Major Projects funds. **Darren Kettle**

The Board of Directors on May 3, 2006 considered and unanimously approved this fund exchange concept. SANBAG Counsel has reviewed and approved the attached agreement.

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

Minute Action

SUPPLEMENTAL AGENDA ITEM: 27A

Date: June 7, 2006

Subject: Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy to Users (SAFETEA-LU) Fund Exchange with the Inland Valley Development Agency (IVDA)

Recommendation:* Approve Agreement 06-072 establishing a “dollar for dollar” fund exchange of SAFETEA-LU High Priority Project funds distributed to the IVDA for Measure I Valley Major Projects funds.

Background: The Board, at the May 2006 meeting, approved the concept of a dollar for dollar fund exchange of SAFETEA-LU High Priority Project funds distributed to the IVDA for Measure I Major Projects funds and directed staff to return to the Board at the June 2006 meeting with a final agreement. The staff and legal counsel for both agencies have finalized the agreement consistent with the concept approved by the SANBAG Board which is herewith attached for Board consideration.

Financial Impact: This action has no impact on the FY 2005/06 Budget. The FY 2006/07 Budget and subsequent budgets will require a budget amendment at such time the Federal Highway Administration makes available the SAFETEA-LU funds.

Reviewed By: The Board of Directors on May 3, 2006 considered and unanimously approved this fund exchange concept. SANBAG Counsel has reviewed and approved the attached agreement.

Responsible Staff: Darren Kettle, Director of Freeway Construction

Approved
Board of Directors

Date: June 7, 2006

Moved:

Second:

In Favor:

Opposed:

Abstained:

Witnessed: _____

SANBAG Contract No. 06-072

by and between

the San Bernardino County Transportation Authority

and

the Inland Valley Development Agency

for

Fund Exchange of Measure I Funds for SAFETEA-LU Funds

FOR ACCOUNTING PURPOSES ONLY			
<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input checked="" type="checkbox"/> Original
<input checked="" type="checkbox"/> Receivable		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment
Notes:			
Original Contract: \$ <u>est.\$30-35M</u>		Previous Amendments Total: \$ _____	
Contingency Amount: \$ _____		Previous Amendments Contingency Total: \$ _____	
		Current Amendment: \$ _____	
		Current Amendment Contingency: \$ _____	
Contingency Amount requires specific authorization by Task Manager prior to release.			
Contract TOTAL →			\$ _____
Please include funding allocation for the original contract or the amendment ↴			
<u>Task</u>	<u>Cost Code</u>	<u>Funding Sources</u>	<u>Amounts</u>
1 <u>0625300</u>	_____	1 <u>MIVMP</u>	\$ <u>est. \$30-35M</u>
2 _____	_____	2 _____	\$ _____
3 _____	_____	3 _____	\$ _____
4 _____	_____	4 _____	\$ _____
Original Board Approved Contract Date: <u>6/07/06</u> Contract Start: _____ Contract End: _____			
New Amend. Approval (Board) Date: _____ Amend. Start: _____ Amend. End: _____			
If this is a multi-year contract/amendment, please allocate costs among fiscal years:			
Fiscal Year: _____ \$ _____	Fiscal Year: _____ \$ _____	Fiscal Year: _____ \$ _____	
Is this consistent with the adopted budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If no, has the budget amendment been submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No			
CONTRACT MANAGEMENT			
Please mark an "X" next to all that apply:			
<input checked="" type="checkbox"/> Intergovernmental <input type="checkbox"/> Private <input type="checkbox"/> Non-Local <input type="checkbox"/> Local <input type="checkbox"/> Partly Local			
Disadvantaged Business Enterprise: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes _____%			
Task Manager: Darren Kettle		Contract Manager: _____	

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

CONTRACT NO. 06-072

**AGREEMENT FOR FUNDING
REGIONAL TRAFFIC IMPROVEMENTS BETWEEN
THE SAN BERNARDINO ASSOCIATED GOVERNMENTS AND
THE INLAND VALLEY DEVELOPMENT AGENCY**

This Agreement for Funding Regional Traffic Improvements (this "Agreement"), is effective as of _____, 2006, and is entered into by and between the San Bernardino Associated Governments ("SANBAG"), and the Inland Valley Development Agency (the "IVDA").

RECITALS

WHEREAS, in August, 2005, the United States Congress enacted and the President signed the successor Act to the Transportation Equity Act for the 21st Century ("TEA-21"), which current Act is now known as SAFETEA-LU; and

WHEREAS, SAFETEA-LU includes a number of categories of projects that received specific funding allocations including projects of local interest which were categorized as Projects of Regional and National Significance and High Priority Projects; and

WHEREAS, Congress has designated \$75,000,000 for the Inland Valley Goods Movement Bill ("IVGMB") which includes funding for several projects located within the vicinity of the former NAFB which is being redeveloped by the IVDA, and the IVDA has the beneficial use of \$36,500,000 from the IVGMB for funding various transportation related projects in proximity to the former NAFB; and

WHEREAS, subsequent to the adoption of the SAFETEA-LU, Congressman Jerry Lewis corresponded with California Business, Transportation and Housing Secretary Sunne Wright McPeak requesting that the State of California distribute these funds consistent with the Congressional intent as further provided in the letter from Congressman Lewis as attached hereto as Exhibit "A"; and

WHEREAS, the IVDA has the need for the immediate use of transportation funds to further its redevelopment efforts for the former NAFB and seeks to obtain current Measure "I" funds as an exchange of funds for the \$36,500,000 of the IVGMB funds in a like dollar amount all as further provided in this Agreement; and

WHEREAS, it is reasonable and of benefit to both the IVDA and SANBAG, and for the benefit of the residents and businesses within the City of San Bernardino ("City") and the region of which the City is a part, to provide for the exchange of transportation funds as requested by the IVDA and as further provided in this Agreement.

NOW, THEREFORE, IN CONDISERATION OF THE MUTUAL COVENANTS AND CONDITIONS AS CONTAINED HEREIN, THE PARTIES TO THIS AGREEMENT DO HEREBY AGREE, AS FOLLOWS:

Section 1. Parties to this Agreement.

SANBAG has been formed pursuant to applicable California law as a joint powers authority to act as a transportation agency, including the San Bernardino County Transportation Commission and the San Bernardino County Transportation Authority, as established by the County of San Bernardino and the municipalities within the County of San Bernardino as members thereof.

The IVDA is a joint powers authority established by the County of San Bernardino, the City of Colton, the City of Loma Linda and the City of San Bernardino in furtherance of the reuse and redevelopment of the former NAFB which is located within the boundaries of the City.

SANBAG and the IVDA are collectively referred to herein sometimes as the "Parties" to this Agreement.

Section 2. Inland Valley Goods Movement Bill.

The Inland East Valley has obtained certain ear-marked funds as approved by Congress in August, 2005, as part of HR 3 the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy to Users (became Public Law No: 109-59; the "SAFETEA-LU") in a dollar amount totaling \$75,000,000 of which a portion thereof has been considered to be the IVGMB which grant funds shall be used by the IVDA in accordance with the letter as attached hereto as Exhibit "A" which clarifies the intent of the 2005 Transportation Bill for the use of \$36,500,000 of grant funds for certain transportation projects of the IVDA.

Section 3. SANBAG Available Funds.

SANBAG currently has existing Measure "I" funds that are designated for expenditure for the widening of the I-215 Freeway from Orange Show Road to the State Route 30 Freeway and for the reconfiguration of interchanges all within the City. SANBAG seeks to accommodate the written request of the IVDA to exchange and substitute the amount of funds that would be received by the IVDA from the \$36,500,000 of the IVGMB for a like dollar amount of existing Measure "I" funds to thus allow the IVDA to undertake the projects listed on the attached Exhibit "B" subject to the provisions and further qualifications and limitations as set forth in Section 4 hereof.

Section 4. Limitations on Payment of Existing Measure "I" Funds to IVDA.

(a) The IVDA recognizes that pursuant to the SAFETEA-LU Act, twenty percent (20%) of the total amount of funds available pursuant to the IVGMB would have been available for use by the IVDA during each federal fiscal year (the "Annual Available Grant Amount"). The parties are of the belief that the date of this Agreement is within the second (2nd) federal

fiscal year of the IVGMB and as such, the IVDA would have been entitled to receive on or before September 30, 2006, an amount equal to two (2) multiplied by the Annual Available Grant Amount and, then annually thereafter, an amount equal to the Annual Available Grant Amount through and including the fifth (5th) federal fiscal year of the IVGMB.

(b) The IVDA further recognizes that each Annual Available Grant Amount is subject to a reduction by the federal government by a certain percentage amount that will vary from federal fiscal year to federal fiscal year dependent upon factors that are outside the control or influence of either the IVDA or SANBAG. The Parties are of the belief that the percentage amount to be distributed as a reimbursement for expenses for each of the first two (2) Annual Available Grant Amounts (the "Actual Grant Reimbursement Amount") is equal to 85% to 87% of the Annual Available Grant Amount. Furthermore, the Actual Grant Reimbursement Amount will likely vary in subsequent federal fiscal years during which the IVGMB would otherwise have provided 2005 SAFETEA-LU Act funds for local projects of the IVDA.

(c) SANBAG shall have no obligation to disburse any amount of the existing Measure "I" funds to the IVDA pursuant to this Agreement until after the date during each federal fiscal year when SANBAG has been informed through an official notification (FHWA Form E 76) as to the exact amount of the Actual Grant Reimbursement Amount as is then available for reimbursement to SANBAG for incurred expenses for the I-215 project in each federal fiscal year. Upon receipt by SANBAG of such official notification of the Actual Grant Reimbursement Amount then available for reimbursement to SANBAG, SANBAG shall within ten (10) business days thereafter, disburse a like amount to the IVDA from the existing Measure "I" funds. SANBAG shall disburse the dollar amount of the existing Measure "I" funds as required pursuant to this Agreement to the IVDA in a single lump sum annual payment.

Section 5. Procedures and Policies for Use of Measure "I" Funds on IVDA Projects.

(a) The IVDA may use and apply the Measure "I" funds as received during each federal fiscal year pursuant to Section 4(c) above for the payment or reimbursement of engineering, acquisition of materials and supplies and the actual labor costs associated with the planning, design, environmental work, right-of-way acquisition, environmental and habitat mitigation, project and construction management, and construction of the arterial streets, highways and bridge projects as set forth on Exhibit "B", which the IVDA may amend at its sole discretion from time-to-time upon delivery of written notice to such effect to SANBAG. The projects listed in Exhibit "B" are not SANBAG projects and SANBAG shall not incur any financial or performance responsibility for those projects as a result of this Agreement. The IVDA shall follow all procedures applicable to the IVDA pursuant to the Government Code and the Public Contract Code for the public bidding and award of the construction contract to the lowest responsible bidder, and shall follow all procedures so applicable for the payment of prevailing wages pursuant to Section 1773 of the Labor Code.

(b) The IVDA shall include within the annual audit of the IVDA a description of the sources and uses of the Measure "I" funds to demonstrate to the reasonable satisfaction of SANBAG that the Measure "I" funds have been used and applied in accordance with this

Agreement. Such annual audit of the IVDA shall be delivered to SANBAG as soon as practicable after such audit has been prepared and certified by the certified public accounting firm retained by the IVDA to conduct the annual IVDA financial audit.

(c) The Measure "I" funds distributed to the IVDA shall not require a matching amount from any other funding sources of the IVDA in connection with the use of the Measure "I" funds as received by the IVDA pursuant to this Agreement.

Section 7. Default; Notice of Default.

Failure or delay by a Party to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that if the defaulting Party commences to cure, correct or remedy the default within thirty (30) calendar days after receipt of written notice specifying such default and thereafter diligently completes such cure, correction or remedy, a breach of this Agreement shall not be deemed to have occurred. The Party claiming that a default has occurred shall give written notice of default to the defaulting Party, specifying the default and the details thereof. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time for which such default shall have occurred; provided, however, the nondefaulting Party shall have no right to exercise any remedy for a breach hereunder without delivering the written default notice as specified herein.

Section 8. Failure to Cure; Remedies.

In the event that the defaulting Party fails to commence to cure, correct or remedy a default within thirty (30) calendar days following written notice, as provided in Section 7 above, or thereafter fails diligently to complete such cure, correction or remedy, a breach of this Agreement shall be deemed to have occurred. In the event of a breach, the nondefaulting Party may (i) at its option, terminate this Agreement and/or (ii) seek any appropriate remedy or damages available at law or in equity. All court actions filed to seek any enforcement or interpretation of this Agreement must be filed solely in the Superior Court of the County of San Bernardino, Main Branch in the City of San Bernardino.

Section 9. No Waiver by Failure or Delay; Cumulative Rights.

(a) Any failure or delay by a Party in asserting any of its or their rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

(b) The rights and remedies of the Parties set forth in Sections 7, 8 and 9 are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it or them, at the same or different times, of any other rights or remedies for the same default or any other default by the defaulting Party.

Section 10. Enforceability of Agreement.

This Agreement shall be deemed to be an enforceable agreement by and between the Parties hereto. Either of the Parties may bring such legal or equitable action as may be permitted under

the laws of the State of California to enforce any provision of this Agreement. The successful Party in any such action to interpret or enforce any provision hereof shall be entitled to receive from the Party against which enforcement is sought all costs associated with such successful actions including all legal fees, costs and other expenses.

Section 11. Notices.

All notices to be given under this Agreement shall be in writing and shall be delivered personally, by Federal Express or other similar overnight courier or express delivery service or by certified or registered United States Mail, return receipt requested. All notices shall be given to the addresses of the Parties and the City as set forth herein. Unless specifically provided to the contrary in this Agreement, any notice pursuant to this Agreement shall be effective upon delivery or refusal to accept delivery, if delivered personally, one (1) calendar day after deposit with Federal Express or other like overnight courier or express delivery service, and two (2) calendar days after mailing, if delivered by certified or registered United States Mail.

Notices to the IVDA sent be sent to the following address:

Inland Valley Development Agency
294 S. Leland Norton Way
San Bernardino, California 92408
Attention: Executive Director

with a copy to:

Lewis Brisbois Bisgaard & Smith LLP
650 East Hospitality Lane, Suite 600
San Bernardino, California 92408
Attention: Timothy J. Sabo

Notices to the SANBAG shall be sent to the following address:

SANBAG
1170 West Third Street, Second Floor
San Bernardino, California 92401
Attention: Executive Director

Section 12. Entire Agreement.

This Agreement between the IVDA and SANBAG represents the sole agreements of the Parties regarding the matters addressed herein that exist as of the date hereof.

Section 13. Governing Law; Invalidity of Any Provision of Agreement.

This Agreement shall be governed by the laws of the State of California. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable as between the parties, the remaining provisions will continue in full force and effect.

Section 14. Amendments.

Except as otherwise provided in Section 5(a) with respect to modifications and changes to Exhibit "B", this Agreement may only be amended, changed, modified or altered by a writing signed by both of the Parties and approved by the respective governing boards thereof in the manner as required by applicable law.

Section 15. Execution of Agreement.

This Agreement may be executed in counterparts, and facsimile signatures shall be as effective as original signatures. Upon the execution hereof by the appropriate representative of both of the Parties, this Agreement shall be deemed to have been approved by the governing bodies of both of the Parties in accordance with all applicable provisions of State law.

**SAN BERNARDINO ASSOCIATED
GOVERNMENTS**

Dated: _____

By: _____
President

ATTEST:
(SEAL)

By: _____
Secretary

Approved as to Form:

By: _____
SANBAG Counsel

**INLAND VALLEY DEVELOPMENT
AGENCY**

Dated: _____

By: _____
Co-Chairperson

Dated: _____

By: _____
Co-Chairperson

ATTEST:
(SEAL)

By: _____
Secretary

Approved as to Form:

By: _____
General Counsel

Exhibit "A"
Letter Setting Forth Use of IVGMB Funds

JERRY LEWIS
41st DISTRICT, CALIFORNIA

COMMITTEE:
APPROPRIATIONS
(CHAIRMAN)

Congress of the United States
House of Representatives
Washington, DC 20515-0541

September 22, 2005

WASHINGTON OFFICE:
ROOM 2112
RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0541
202-225-5861

DISTRICT OFFICE:
1180 BROOKSIDE AVENUE
SUITE J-4
REDLANDS, CA 92373-8314
909-862-8030
909-762-6901
1-800-225-1700
(WITHIN CALIFORNIA)
www.house.gov/jerrylewis

Secretary Sunne Wright McPeak
Business, Transportation & Housing Agency
980 9th Street, Suite 2450
Sacramento, CA 95814-2719

Dear Secretary McPeak:

As you begin the process of distributing federal funds for transportation projects included in SAFETEA-LU, I write to you regarding the Inland Empire Goods Movement Gateway project.

In SAFETEA-LU, I was pleased to secure \$55 million for the Inland Empire Goods Movement Gateway project under the Projects of National and Regional Significance category; as well as an additional \$20 million under Section 1701-High Priority Projects, for a total of \$75 million. As you may know, the Inland Valley Development Agency, the San Bernardino Associated Governments, and the cities of Highland and San Bernardino are implementing a regional effort to facilitate goods movement through the county, specifically in and around the former Norton Air Force Base. This project, called the Inland Empire Goods Movement Gateway, includes several transportation improvements that will greatly enhance mobility throughout the region and help speed the flow of commerce in the area.

In order to maximize the effectiveness of these funds, I respectfully request that you follow congressional intent by ensuring the funds are distributed in the following manner:

- \$30 million to the San Bernardino Associated Governments for the I-10/Tippecanoe Interchange
- \$1.5 million to the San Bernardino Associated Governments for the I-215/Barton Road Interchange
- \$36.5 million to the Inland Valley Development Agency for road, bridge, and grade separation improvements in and around the former base.
- \$2 million to the City of Highland, California for Boulder Avenue improvements and bridge widening
- \$5 million to the City of San Bernardino, California for the I-215/University Parkway Interchange

Thank you in advance for your attention to this important matter. Should you have any questions, please do not hesitate to contact me or Elizabeth Lewis, of my staff, at 202-225-5861.

Sincerely,


Jerry Lewis
Member of Congress

JL:el

cc: Will Kempton, Director of California Department of Transportation

Exhibit "B"

Description of Arterial Streets, Highways and Bridge Projects
Intended to be Undertaken by the IVDA with the Measure "T" Funds

Inland Valley Development Agency
San Bernardino International Airport Authority
Roadway Projects
Listed by Priority
Updated September 22, 2005

Project Lead Agency	Priority	PROJECT DESCRIPTION	Total Est Cost of Project	Proposed Allocation
IVDA	1	Central Ave- Widen Central from Waterman to Tippecanoe	\$ 3,500,000	
		Widen Central from Tippecanoe to Mt. View Bridge	\$ 2,000,000	\$ 5,500,000 \$ 4,400,000
IVDA	2	Mt. View- Widen Mt. View Ave at RR Grade crossing from 2 to 4 lanes	\$ 240,000	
		Widen Mt. View Bridge at Mission Creek from 2 to 4 lanes	\$ 1,152,000	
		Widen Mt. View Ave from I-10 to San Bernardino Ave, 2 to 4 lanes	\$ 1,200,000	
		Widen Mt. View from Riverview Dr to Central from 0 to 2 lanes(bridge)	\$ 6,912,000	\$ 9,504,000 \$ 7,603,200
IVDA	3	Tippecanoe- Widen Tippecanoe from Mill to Harriman from 4 lanes to 6 lanes	\$	\$ 3,200,000 \$ 2,560,000
	4	Lena Road- Widen Lena Rd from Mill to Orange Show Rd from 0 to 4 lanes (new road)	\$	\$ 6,400,000 \$ 5,120,000
	5	3rd/5th St- Widening and circulation network improvements on 3rd and 5th Streets from Tippecanoe to Palm	\$	\$ 27,300,000 \$ 16,016,800
IVDA	6	Del Rosa- Widen Del Rosa from 3rd to Highland Avenue (incl. land acquisition)	\$	\$ 1,000,000 \$ 800,000
IVDA Total - Arterial Roadways			\$ 52,904,000	\$ 36,500,000



Inland Empire Goods Movement Gateway Project

